



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 451

IN THE MATTER
OF
ARTHUR L. HILSON

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Arthur L. Hilson (Mr. Hilson) pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 16, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Hilson. The Commission has concluded its inquiry and, on June 16, 1992, by a majority vote, found reasonable cause to believe that Mr. Hilson violated G.L. c. 268A, §§3 and 23.

The Commission and Mr. Hilson now agree to the following findings of fact and conclusions of law:

1. Mr. Hilson was, during the time here relevant, the Director of the Department of Public Safety (Department) at the University of Massachusetts in Amherst.^{1/} As such, Mr. Hilson was a state employee as that term is defined in G.L. c. 268A, '1.

2. As the Department Director, Mr. Hilson had supervisory authority over Department personnel. Mr. Hilson's supervisory responsibilities included signing off on all promotions and personnel evaluations, and acting as the appeal authority for disciplinary matters.

3. In 1990, Mr. Hilson's duties as the Department Director also included serving as the Chief of the University of Massachusetts Police Department.

4. Until April 19, 1990, Erma Rocasah worked for the Department in its payroll division. She did not work directly for Mr. Hilson during the times relevant here.

While subject to his authority, Rocasah developed a friendship with Mr. Hilson.

5. In March 1990, Mr. Hilson executed a \$1,367 personal check to Choice Meats of Greenfield, Massachusetts for the purchase of beef. Mr. Hilson lacked sufficient funds in his checking account to cover the check.

6. On March 26, 1990, Mr. Hilson approached Rocasah and borrowed \$1,000 from her to augment his checking account. Mr. Hilson signed a promissory note

for the loan. The loan was made payable by April 30, 1990, but called for no interest payments.

7. Both Mr. Hilson and Rocasah maintain that friendship motivated their participation in the loan transaction.

8. On April 13, 1990, the wife of a Department special police officer complained to Department personnel that her husband's W-2 forms reflected wages far greater than income he had actually earned.

9. On April 19, 1990, Mr. Hilson ordered an investigation into the suspected embezzlement of \$15,000 worth of special police officer detail checks by Rocasah. On April 19, 1990, Rocasah resigned from her position with the Department.

10. Also on April 19, 1990, the Department's investigator informed the Northwestern District Attorney's office of the Department's probe. The District Attorney's office played no role in the investigation until September 1990.

11. Mr. Hilson informed his supervisor, a University of Massachusetts Vice-Chancellor, of the investigation and his Department's contact with the District Attorney's office. Due to adverse media concerns, the Vice-Chancellor criticized Mr. Hilson for contacting the District Attorney's office and for not handling the matter internally by referring it to the university's attorney.

12. On April 20, 1990, Mr. Hilson telephoned Rocasah at her home. Rocasah inquired when she was going to be arrested and taken to jail. Mr. Hilson responded that Rocasah was not to worry as the university only wanted its money back and that the matter in all probability would be handled internally.^{2/}

13. On April 24, 1990, Mr. Hilson authorized an audit of the Department's payroll division as part of the ongoing investigation.

14. On May 1, 1990, Mr. Hilson repaid \$500 of the March 26, 1990 \$1,000 loan from Rocasah. He has not repaid the outstanding \$500 balance.

15. On June 11, 1990, Rocasah mailed a letter and a \$1,000 check to Mr. Hilson. The letter stated that the check was "[a] token of sincere appreciation for standing by me and turning a deaf ear to all the voices of discontentment with me." Rocasah explained she offered the gift partially to thank Mr. Hilson for his support during her resignation, and partially to thank him for his support and efforts during problems she encountered with her former immediate Department supervisor.

16. Mr. Hilson deposited the \$1,000 check into a personal bank account on June 13, 1990.

17. The Department investigator completed his probe on September 12, 1990, and furnished his findings to the District Attorney.

18. In December 1990, the District Attorney indicted Rocasah on larceny charges in Superior Court.

19. At all times during the investigation, Mr. Hilson as the Department Director possessed the authority to terminate the Department's investigation. After interviewing 20 university employees and law enforcement officials, however, the Commission has found no evidence that Mr. Hilson ever attempted to interfere with the investigation, or advocate lenient treatment for Rocasah.

\$1,000 Gift

20. General Laws c. 268A, '3(b) forbids a public official, except as otherwise provided by law, from accepting an item of substantial value^{3/} for or because of an official act performed or to be performed. An official violates '3 when he accepts a gift from a person he is in a position to officially benefit, and the giver is motivated to extend the gift because of the official's public duties.^{4/}

21. By accepting a \$1,000 gift from a criminal suspect being investigated by his police department when he was in a position to terminate that investigation, Mr. Hilson violated '3.

\$1,000 Loan

22. General Laws c. 268A, '23(b)(3) prohibits a state employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy his favor in the conduct of his official duties.

23. By securing an immediate, no-interest \$1,000 loan from his subordinate, Mr. Hilson acted in a manner which would cause a reasonable person to conclude that Rocasah could unduly enjoy his official favor in personnel evaluation, promotion and disciplinary matters. Thus, Mr. Hilson violated §23(b)(3).^{5/} Mr. Hilson exacerbated this appearance of an impropriety by failing to repay the \$500 loan balance, especially when his failure to do so occurred while the Department's investigation of Rocasah was pending.

In view of the foregoing violations of G.L. c. 268A by Mr. Hilson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mr. Hilson:

1. that Mr. Hilson pay to the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for violating §3 by accepting the gift; and
2. that Mr. Hilson pay to the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for violating G.L. c. 268A, §23 by soliciting the loan and failing to fully repay it; and
3. that Mr. Hilson forfeit to the Commission one thousand dollars (\$1,000.00) as the improper benefit of the June 1, 1990 gift; and
4. that Mr. Hilson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: October 5, 1992

^{1/}Following the Commission's reasonable cause finding, Mr. Hilson resigned his position as Director, effective September 30, 1992.

^{2/}Mr. Hilson asserts that he responded to Rocasah's question by stating that the matter was out of the university's hands, and within the control of the District Attorney. As noted in paragraphs 10 and 17, the Commission determined that the District Attorney's office played no role in this matter until September 1990. The Commission also determined that Mr. Hilson in November 1990 stated to Rocasah's husband that his wife's case was out of the university's hands, and now in the District Attorney's control.

^{3/}Anything valued at \$50 or more is an item of substantial value. *Commonwealth v. Famigletti*, 4 Mass. App. 584, 587 (1976).

^{4/}The Commission will not consider a gift to have been given "for or because of an official act" where a subject establishes that friendship was the motive for the gift. *In re Ackerley Communications*, 1991 SEC 518, 520 n.5. Where friendship partly motivates a gift, the gift is still prohibited if the giver is also motivated by a desire to create official good will. Here, Rocasah's letter makes clear that friendship was not the motive for the \$1,000 gift.

^{5/}See *In re Lannon*, 1984 SEC 208 (school superintendent violates §23(b)(3) by borrowing money from subordinate). Mr. Hilson's assertion that the loan was motivated by friendship is not a defense since no matter how thoroughly this matter is investigated, some uncertainty will remain as to whether the loan was motivated in part by job considerations. Absent the friendship factor, the loan would probably be an unwarranted privilege violating G.L. c. 268A, §23(b)(2) or an unlawful gratuity violating G.L. c. 268A, §3.